

July 22, 2002

D.T.E. 02-15

Investigation by the Department of Telecommunications and Energy on its own motion, pursuant to G.L. c. 159, §§ 12 and 16, into the regulations, practices, equipment, appliances, and service of Network Plus, Inc.

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ORDER TO CLOSE INVESTIGATION

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## ORDER TO CLOSE INVESTIGATION

### I. INTRODUCTION AND PROCEDURAL HISTORY

On February 20, 2002, the Department of Telecommunications and Energy (“Department”) opened an investigation, pursuant to G.L. c. 159, §§ 12 and 16, into the regulations, practices, equipment, appliances, and service of Network Plus, Inc. (“Network Plus”). In the Order opening the investigation, the Department stated its concern that some or all of the approximately 11,500 Massachusetts customers of Network Plus, which included numerous nursing homes, ambulance companies, state agencies, courts of law, and municipal governments, might lose service without adequate notice as a result of Network Plus’ ongoing Chapter 11 bankruptcy proceeding. The Department stated its intention to begin a review of Network Plus’ activities regarding its bankruptcy in order to determine whether Network Plus’ regulations, practices, equipment, appliances, and service were just, reasonable, safe, proper, and adequate. The Department stated that because customers of a carrier in bankruptcy may face an abrupt loss in service, the Department intended to conduct its investigation in as expeditious a manner as possible, while still adhering to the requirements of due process.

The Department held an emergency investigatory hearing on February 25, 2002. Immediately preceding the emergency hearing, the Department conducted a public hearing and procedural conference at which the Department granted intervenor status to AT&T Communications of New England, Inc. (“AT&T”), XO Massachusetts, Inc. (“XO”), PaeTec Communications, Inc. (“PaeTec”), RNK, Inc. d/b/a RNK Telecom (“RNK”), Global NAPs, Inc. (“Global NAPs”), and Conversent Communications of Massachusetts, LLC

(“Conversent”). Pursuant to G.L. c. 12, § 11E, the Attorney General of the Commonwealth of Massachusetts (“Attorney General” or “AG”) filed a notice of intervention in the proceeding. At the evidentiary hearing, Network Plus presented the testimony of James Joseph Crowley, Chief Operating Officer; Lisa Korner Butler, Vice-President of Regulatory and Industry Affairs; Richard Rubino, Vice-President of Provisioning; and Steven Stanfill, Vice-President of Network Planning. The evidentiary record consists of one exhibit and Network Plus’ responses to six record requests. On March 7, 2002, the Department received briefs from XO and the Attorney General. On March 15, 2002, the Department received reply briefs from AT&T, Network Plus, and the Attorney General. Also on March 15, 2002, the Department received a Motion to Appear Pro Hac Vice from Kathleen Greenan on behalf of Network Plus. No party filed an objection to the Motion to Appear Pro Hac Vice.<sup>1</sup>

## II. DISCUSSION

### A. Positions of the Parties

#### 1. Attorney General

In his brief, the Attorney General argues that the Department should reject any attempt by Network Plus for a waiver of the Department’s 60 day written notice of disconnection requirement established by the Department in its D.T.E. 02-14 proceeding (AG Brief at 2-3).<sup>2</sup>

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<sup>1</sup> Because we close the investigation, it is not necessary to rule on Kathleen Greenan’s Motion to Appear Pro Hac Vice. We therefore dismiss the motion without ruling.

<sup>2</sup> In D.T.E. 02-14, the Department commenced an emergency investigation into the regulations, practices, equipment, appliances, and service of Broadview Networks, Inc. (“Broadview”) concerning the potential loss of telecommunications service to former Net2000 customers in Massachusetts served by Broadview. D.T.E. 02-14-A at 1

(continued...)

The Attorney General argues that because Network Plus is aware of the notice requirement, and can plan ahead for the required 60 day period, Network Plus has not demonstrated good cause to justify a waiver of Department rules (id. at 3). Further, the Attorney General argues that the Department should require that Verizon give priority to customers that provide critical health, welfare, and safety services when transferring customers from Network Plus to a new service provider (id.). In the D.T.E. 02-14 proceeding, Verizon agreed to facilitate the transfer of customers in as soon as two weeks, and the Attorney General argues that the same treatment should be accorded Network Plus' critical customers (id.). In his reply brief, the Attorney General argues that, while XO's suggestion to adopt the New York Public Service Commission's ("NYPSC") Mass Migration Guidelines is beyond the scope of this proceeding, the Department should open a generic investigation into the adoption of mandatory procedures to govern the migration of customers from telecommunications service providers that go out of business, file for bankruptcy, or otherwise terminate service in some or all Massachusetts markets (AG Reply Brief at 1-2).

2. XO

In its brief, XO states that when carriers acquire customers who must find a new service provider due to bankruptcy, it can be difficult to reassure customers that the migration to the new carrier will be seamless and efficient (XO Brief at 1). There have been situations,

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<sup>2</sup>(...continued)

(2002). In its Order, the Department determined that Broadview had provided inadequate notice of disconnection to the former Net2000 customers, and established a requirement that carriers in Massachusetts must provide customers with 60 day advance written notice of discontinuation of service or network shutdown. Id. at 10-11.

XO states, when XO has acquired customers of carriers in bankruptcy, such as Network Plus, but XO has been unable to convert these customers by the date given by the exiting carrier for disconnection (id. at 1-2). This problem, argues XO, is due to the inability of Verizon, through no fault of its own, to perform the necessary work to migrate the customer within the time frame established by the exiting carrier (id. at 2). XO argues that clear Department guidelines regarding exiting carriers' obligations would be helpful in situations such as these (id.). Therefore, XO urges the Department to adopt the Mass Migration Guidelines recently approved by the NYPSC (id.). XO argues that the NYPSC Mass Migration Guidelines have been used successfully for several carriers exiting the New York market to manage an orderly migration of customers to new carriers (id. at 3). Having approved guidelines in place, argues XO, will provide advance notice of what must occur in a mass migration situation and establish appropriate time frames in order to minimize customer impact (id.). XO further urges the Department to adopt the guidelines for individual customer migrations (as opposed to mass migrations) also adopted by the NYPSC (id. at 3-4).

### 3. AT&T

In its reply brief, AT&T agrees with XO and the Attorney General that the Department should establish guidelines for orderly and expeditious migrations of customers of firms that may cease operations with little notice (AT&T Reply Brief at 1). AT&T concurs with XO's recommendation that the Department adopt the NYPSC Mass Migration Guidelines (id. at 2). AT&T argues that the NYPSC guidelines assure that all companies that may be interested in serving customers facing a loss of service will have an opportunity to compete for them, and

defines the role of the regulator in monitoring the migration process and providing swift resolution of any issues that may arise between carriers (id.). AT&T further argues that if the Department can minimize the risk of customer service outages during migrations, consumer confidence in competitive telecommunications carriers will increase, and competition will benefit (id. at 3). AT&T argues that not only have the NYPSC guidelines worked well in New York, but also that common use of the guidelines in New York and Massachusetts will create efficiencies for carriers that operate in both states (id.). AT&T supports the Attorney General's recommendation to continue to require 60 days written notice of disconnection to customers, as well as the Attorney General's recommendation that an exiting carrier provide customer information to Verizon to aid the migrations process, but reminds all parties that such customer information should only be used by Verizon in connection with its work as a wholesale provider (id.). Lastly, AT&T recommends that, in highly compressed migration time frames, priority of transfer should be given to services identified as urgent by the customer itself, rather than having a blanket approach to the transfer of mission-critical customers (id. at 4).

#### 4. Network Plus

In its reply brief, Network Plus requests that the Department clarify whether the 60 day advance written notice of disconnection requirement established by the Department in D.T.E. 02-14 applies when carriers disconnect other carriers in addition to when carriers disconnect end-user customers (Network Plus Reply Brief at 1). Network Plus argues that unless underlying service providers, such as Verizon, are required to provide the same or additional notice, it would be impossible for Network Plus, and other carriers in financial distress, to



comply with the Department's notice of disconnection requirement (id.). Network Plus argues that, under Verizon's Massachusetts tariffs, Verizon currently needs to provide only 30 days notice prior to disconnecting service to carriers (id. at 2). Therefore, Network Plus urges the Department to clarify its requirement and order Verizon to provide at least 60 days notice for carrier-to-carrier disconnection, and order Verizon to revise its tariffs accordingly (id.).

B. Analysis and Findings

For the reasons stated below, the Department concludes that our concerns regarding the potential loss of telecommunications service to some or all of Network Plus' Massachusetts customers as a result of its Chapter 11 bankruptcy proceeding have been adequately addressed, and that the Department can now close its investigation in this docket. First, on March 20, 2002, the United States Bankruptcy Court for the District of Delaware approved the sale of the assets of Network Plus (including its Massachusetts customer base) to Broadview Networks, a carrier registered to provide telecommunications service in Massachusetts as Broadview Net Plus. In accordance with the terms of the sale, during the transition to the new provider, the entire network remained in place, no Massachusetts customer lost service, and the provider name on the customer bill was the only change visible to the customer. In other words, the transition of Massachusetts customers to the new provider, Broadview Net Plus, was both seamless and successful.

Second, in order to address the Department's and the parties' concerns regarding procedures for future mass migrations of telecommunications customers, on April 19, 2002, the Department issued an Order Opening Proceeding and Initiation of Mass Migration

Collaborative in a new docket, D.T.E. 02-28. In the Order Opening Proceeding, the Department acknowledged that, as a result of the D.T.E. 02-14 and D.T.E. 02-15 proceedings, it has become clear that procedures are required to help promote, to the extent possible, a seamless migration of large numbers of end-users between competitive local exchange carriers ("CLECs"), or from a CLEC to the incumbent, when a service provider discontinues service in Massachusetts. The Mass Migration Collaborative initiated by the Order met several times, and on June 7, 2002, the Collaborative submitted to the Department a set of Draft Guidelines to govern situations when a telecommunications service provider exits all or part of the Massachusetts market and a significant number of end-users must be helped to migrate to other providers. The Department has opened an adjudicatory proceeding to review the Draft Guidelines and expects to issue an Order in the near future establishing final requirements with which Massachusetts carriers must comply when they go out of business, file for bankruptcy, or otherwise terminate service in Massachusetts.

The Department concludes that the successful transition of Network Plus' customers in Massachusetts to a new provider, combined with the Department's ongoing proceeding to establish mass migration requirements, fully address the Department's and the parties' interests in this investigation. Accordingly, the Department closes this investigation.

III. ORDER

After due notice, hearing and consideration, it is

ORDERED: That the Department's investigation in D.T.E. 02-15 is hereby closed.

By Order of the Department,

\_\_\_\_\_/s/\_\_\_\_\_  
Paul B. Vasington, Chairman

\_\_\_\_\_/s/\_\_\_\_\_  
James Connelly, Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
W. Robert Keating, Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
Eugene J. Sullivan, Jr., Commissioner

\_\_\_\_\_/s/\_\_\_\_\_  
Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).